IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.951 OF 2007

Shri.Parwez Haniph Shaikh ..Applicant

Vs.

State of Maharashtra ..Respondents

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Mr.L.S.Gaikwad advocate for applicant
Mr.Rajesh More A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 11, 2007

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking bail in C.R.No.377 of 2006 of Satara City Police Station. The said case is under Sections 365 and 302 of IPC.

3. It is the prosecution case that the present applicant was engaged in criminal activities and Samir (deceased) was giving the information about Samir to the police. Being enraged by this fact, the applicant committed murder of Samir.

4. The learned advocate for the applicant has pointed out that though Samir was missing from 10.5.2006, the FIR has been lodged by his mother only on 3.7.2006. He has submitted that this delay itself raises doubt regarding the prosecution case. He further submitted that missing complaint has been lodged by the mother on 25.5.2006, however, in the said missing report, no reference has been made to the present applicant. Complainant has stated that her younger son Toheen had informed her that on 10.5.2006 the applicant had made enquiry with Toheen regarding the whereabouts of Samir and the applicant had told Toheen that Samir is giving information about his activities to the police. Hence, he would take care of Samir. In this regard, Mr.Gaikwad, the learned advocate for the applicant has submitted that this appears to be an after thought because if the applicant had stated so to Toheen, the said fact would have been stated by the complainant in the missing report lodged by her. As far as this aspect is concerned, it is seen that the complainant is a labourer and she appears to be illiterate. In such case, she may have given bare details that her son being missing in the missing report and she has not given any

other details. So also in view of the facts of this case, delay in lodging the FIR would not shake the prosecution case. Moreover, there is another circumstance against the applicant i.e. "last seen". Samir was working with one Salim Bagwan. Salim has stated that he has a shop and the deceased was working in his shop. He has further stated that on 10.5.2005 at about 5.30 p.m. the present applicant came to his shop and after the applicant spoke to Samir, Samir approached the witness and stated that he is going out with the applicant and he will return back in half an hour. This witness has stated that thereafter Samir did not return back to his shop.

5. Mr.Gaikwad has submitted that the spot panchnama does not show any incriminating material. However, it is seen that the spot panchnama is drawn many days after the incident and in such case, it is not expected that any incriminating material would be found at the spot when the panchnama was drawn. Besides this Toheen who is the brother of applicant, has stated that on 10.5.2006 at about 4.30 p.m. the applicant approached him and told that Samir is giving

information about his activities to the police, hence, he would take care of Samir.

6. Lastly, it was submitted that the C.A. report does not implicate the applicant. As far as this aspect is concerned, the motive has already been stated by the witnesses. Besides this there is circumstance of ‘last seen’ against the applicant. In addition to this, the applicant is also involved in C.R.No.172 of 2006 of Satara Police Station. The said case is similar in nature i.e. under Sections 364, 302 and 201 of IPC. The applicant is also involved in C.R.No.178 of 2006 under Section 394 and C.R.No. 45 of 2006 under Section 279 of IPC of Satara Police Station. Besides this, the applicant is also involved in various other cases registered at Satara City Police Station i.e. C.R.No.260 of 2001. The said case is under Section 380 of IPC, C.R.No. 276 of 2001 which is under Section 457 and 380 of IPC, C.R.No.377 of 2004 which is is under Section 292 of IPC, C.R.No. 522 of 2004 under Sections 457 and 380 of IPC, and C.R.No. 640 of 2006 under Section 394 of IPC. In addition to this, on 11.7.2006, Borgaon Police Station was informed that one Car met with an

accident and there are injured persons in the said Car. Hence, Police rushed to the spot and they found the present applicant along with two others in the said Car. In the said car, one revolver was found. It is the prosecution case that the said revolver belongs to the present applicant. Looking to the above facts and especially the antecedents of the applicant, I am not inclined to grant bail.

7. Application is rejected.

[Smt. V.K.Tahilramani, J.]